

PATENT
Application # 10/042,143
Attorney Docket # 2000-0672A (1014-200)

REMARKS

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Each of claims 1, 6, 10, 12, 23, 34, 36, 37, and 39 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, limitations, phrases, terms and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1, 3-12, 14-33, 25-34, and 36-44 are now pending in this application. Each of claims 1, 12, 23, and 34 is in independent form.

I. The Anticipation Rejections

Each of claims 1, 3-6, 9-12, 14-17, 20-23, 25-28, 31-34, 36-39, and 42-44 was rejected as anticipated under 35 U.S.C. 102(b). In support of the rejection, various portions of U.S. Patent 6,732,315 ("Yagil") were applied. These rejections are respectfully traversed as moot in view of the present amendments to at least claims 1, 12, 23, and 34.

Specifically, each of claims 1, 12, 23, and 34, from one of which each of claims 3-6, 9-11, 14-17, 20-22, 25-28, 31-33, 36-39, and 42-44 ultimately depends, states, *inter alia*, yet no substantial evidence has been presented that the applied portions of Yagil teach, "each pair of Home Phoneline Network frames having timing to allow an Inter-Frame Gap (IFG) having a duration greater than zero microseconds, the IFG comprising a blocking signal adapted to prevent an HPNA v2 (v2 STA) station from recognizing" "the IFG, the blocking signal not comprising frame content".

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Even prior to amending each of claims 1, 12, 23, and 34, the present Office Action fails to provide a *prima facie* rejection of any of claims 1, 3-6, 9-12, 14-17, 20-23, 25-28, 31-34, 36-39, and 42-44.

The MPEP states that where "a claim is refused for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated." *See* MPEP 707.07(d).

The present Office Action responds to Applicant's previously presented persuasive arguments by stating, at Page 9:

[t]he examiner respectfully submits that Yagil teaches each pair of Home Phoneline Network frames (when a block of consecutive MAP-granted packets) having timing to allow an Inter-Frame Gap (IFG) (when a few granted bursts are transmitted consecutively, the Inter-Frame Gap (IFG)), the IFG comprising a blocking signal adapted to prevent an HPNA v2 station (v2 STA) from recognizing the IFG (when a block of consecutive MAP-granted packets ... HomePNA 2.0x stations regard the block as one long message. Therefore, HomePNA 2.0x stations will have no transmission opportunities during the transmission of this block - see Yagil, col. 11, lines 5 1-67). This renders the rejection proper, and thus the rejection stands.

Applicant respectfully submits that this argument, and hence the rejection of each of claims 1, 12, 23, and 34 is substantially unintelligible and, therefore, unclear under MPEP 707.07(d). No reasonable Applicant could possibly guess what is meant by the statement, "when a few granted bursts are transmitted consecutively, the Inter-Frame Gap (IFG)". In addition, it is not at all clear how the statement "when a block of consecutive MAP-granted packets ... HomePNA 2.0x stations regard the block as one long message. Therefore, HomePNA 2.0x stations will have no transmission opportunities during the transmission of this block - see Yagil, col. 11, lines 5 1-67" provides any evidence that the applied portions of Yagil teach, "the IFG comprising a blocking signal adapted to prevent an HPNA v2 station (v2 STA) from recognizing the IFG".

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For at least these reasons, the present Office Action fails to present a *prima facie* rejection of any of claims 1, 3-6, 9-12, 14-17, 20-23, 25-28, 31-34, 36-39, and 42-44 prior to the present amendments.

For at least these reasons, it is respectfully submitted that the rejection of claims 1, 12, 23, and 34 is unsupported by Yagil and should be withdrawn. Also, the rejection of claims 3-6, 9-11, 14-17, 20-22, 25-28, 31-33, 36-39, and 42-44, each ultimately depending from one of independent claims 1, 12, 23, and 34, is unsupported by Yagil and also should be withdrawn.

II. The Obviousness Rejections

Each of claims 7, 8, 18, 19, 29, 30, 40, and 41 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of U.S. Patent 6,732,315 ("Yagil"), and/or U.S. Patent 6,954,800 ("Mallory"). These rejections are respectfully traversed as moot in view of the present amendments to at least claims 1, 12, 23, and 34.

As stated, *supra*, each of claims 1, 12, 23, and 34, from one of which each of claims 7, 8, 18, 19, 29, 30, 40, and 41 ultimately depends, states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the relied-upon references teach, "each of the plurality of Home Phoneline Network frames comprising a Transmission Duration field in a frame header/preamble".

Even prior to amending each of claims 1, 12, 23, and 34, the present Office Action fails to provide a *prima facie* rejection of any of claims 7, 8, 18, 19, 29, 30, 40, and 4.

The MPEP states that where "a claim is refused for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated." *See* MPEP 707.07(d).

The present Office Action responds to Applicant's previously presented persuasive arguments by stating, at Page 9:

[t]he examiner respectfully submits that Yagil teaches each pair of Home Phoneline Network frames (when a block of consecutive MAP-granted packets) having timing to allow an Inter-Frame Gap (IFG) (when a few granted bursts are transmitted consecutively, the Inter-Frame Gap (IFG)), the IFG comprising a blocking signal adapted to prevent an HPNA v2 station (v2 STA) from

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recognizing the IFG (when a block of consecutive MAP-granted packets ... HomePNA 2.0x stations regard the block as one long message. Therefore, HomePNA 2.0x stations will have no transmission opportunities during the transmission of this block - see Yagil, col. 11, lines 5 1-67). This renders the rejection proper, and thus the rejection stands.

Applicant respectfully submits that this argument, and hence the rejection of each of claims 1, 12, 23, and 34 is substantially unintelligible and, therefore, unclear under MPEP 707.07(d). No reasonable Applicant could possibly guess what is meant by the statement, "when a few granted bursts are transmitted consecutively, the Inter-Frame Gap (IFG)". In addition, it is not at all clear how the statement "when a block of consecutive MAP-granted packets ... HomePNA 2.0x stations regard the block as one long message. Therefore, HomePNA 2.0x stations will have no transmission opportunities during the transmission of this block - see Yagil, col. 11, lines 5 1-67" provides any evidence that the applied portions of Yagil teach, "the IFG comprising a blocking signal adapted to prevent an HPNA v2 station (v2 STA) from recognizing the IFG".

For at least these reasons, the present Office Action fails to present a *prima facie* rejection of any of claims 7, 8, 18, 19, 29, 30, 40, and 4 prior to the present amendments.

For at least these reasons, it is respectfully submitted that each rejection of claims 7, 8, 18, 19, 29, 30, 40, and 41, each ultimately depending from one of independent claims 1, 12, 23, and 34, is unsupported by the applied portions of the relied-upon references and also should be withdrawn.

III. Next Office Action

If an Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a "new grounds of rejection." Consequently, any Office Action containing such rejection can not properly be made final. *See, In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining "new ground of rejection" and requiring that "when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make

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a showing of unobviousness vis-a-vis such portion of the reference"), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO "has the initial duty of supplying the factual basis for its rejection").

Applicant respectfully submits that the present Office Action fails to provide a *prima facie* rejection of any claim. Therefore, the next Office Action cannot properly be made final.

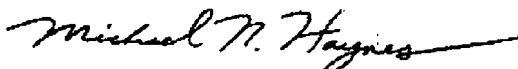
CONCLUSION

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



Michael N. Haynes

Registration 40,014

Date: 09 October 2007

1341 Huntersfield Close

Keswick, VA 22947

Telephone: 434-972-9988

Facsimile: 815-550-8850